APPENDIX

Sections 21, 22, and 23, Title II, of the National Prohibition Act (c. 85, 41 Stat. 305, 314; U. S. C., Title 27, Sections 33, 34, and 35), provide:

> SEC. 21. Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of this title, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $1,000 or be imprisoned for not more than one year, or both. If a person has knowledge or reason to believe that his room, house, building, boat, vehicle, structure, or place is occupied or used for the manufacture or sale of liquor contrary to the provision of this title, and suffers the same to be so occupied or used, such room, house, building, boat, vehicle, structure, or place shall be subject to a lien for and may be sold to pay all fines and costs assessed against the person guilty of such nuisance for such violation, and any such lien may be enforced by action in any court having jurisdiction.
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> SEC. 22. An action to enjoin any nuisance defined in this title may be brought in the name of the United States by the Attorney General of the United States or by any United States attorney or any prosecuting

attorney of any State or any subdivision thereof or by the commissioner or his deputies or assistants. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the liquor or fixtures, or other things used in connection with the violation of this Act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no liquors shall be manufactured, sold, bartered, or stored in such room, house, building, boat, vehicle, structure, or place, or any part thereof. And upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for one year thereafter; but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in

the penal and liquidated sum of not less than $500 nor more than $1,000, payable to the United States, and conditioned that intoxicating liquor will not thereafter be manufactured, sold, bartered, kept, or otherwise disposed of therein or thereon, and that he will pay all fines, costs, and damages that may be assessed for any violation of this title upon said property.

SEC. 23. That any person who shall, with intent to effect a sale of liquor, by himself, his employee, servant, or agent, for himself or any person, company, or corporation, keep or carry around on his person, or in a vehicle, or other conveyance whatever, or leave in a place for another to secure, any liquor, or who shall travel to solicit, or solicit, or take, or accept orders for the sale, shipment, or delivery of liquor in violation of this title is guilty of a nuisance and may be restrained by injunction, temporary and permanent, from doing or continuing to do any of said acts or things.

In such proceedings it shall not be necessary to show any intention on the part of the accused to continue such violations if the action is brought within sixty days following any such violation of the law.

For removing and selling property in enforcing this act the officer shall be entitled to charge and receive the same fee as the sheriff of the county would receive for levying upon and selling property under execution, and for closing the premises and keeping them closed a reasonable sum shall be allowed by the court.

Any violation of this title upon any leased premises by the lessee or occupant thereof shall, at the option of the lessor, work a forfeiture of the lease.

STATE LIQUOR NUISANCE LAWS REFERRED TO IN MEMORANDUM ACCOMPANYING REPORT NO. 151 ON H. R. 6810 BY THE SENATE JUDICIARY COMMITTEE

General Acts Alabama, 1915 (Act of January 23, 1915), pp. 14–16:

> SEC. 20. That the nuisances named in the preceding section may be abated by a proceeding in equity in a court of competent jurisdiction, and the State attorney general, * * * or any prosecuting officer * * * may upon their relation file a bill in the name of the State of Alabama in the chancery court, or other court possessing equity jurisdiction, in the county where the nuisance exists, to abate and perpetually enjoin the same. * * * The owner of and all persons interested in the building or premises where the nuisance exists, or any agent renting the same, as well as the keeper thereof, may be joined with the keeper as parties defendant to the proceedings, and all such owners, keepers, parties interested, or agents who may be found to have knowingly assented to the keeping or maintaining of such nuisance on the premises at any time within six months prior to the commencement of the suit, and their servants, lessees, and tenants, shall be perpetually enjoined from maintaining and keeping, or suffering to be kept and maintaining, such nuisance, or any liquor nuisance, upon the said premises. The court shall have full power and authority to maintain its jurisdiction and by all suitable orders and writs to enforce its decrees in respect to the subject matter of the suit, and to so shape and mold its decrees as to accomplish the purpose of the bill; and all the rules of evidence, practice, and procedure, except as otherwise herein provided, that pertain to courts of

equity generally, or that exist by virtue of any law of this State, may be invoked and applied in any such injunction proceeding instituted hereunder. Upon the final hearing of the case instituted to abate a liquor nuisance, if it shall appear that the bill has been sustained by the evidence, or has been taken or confessed, the court shall order an abatement of the nuisance, which order shall direct the destruction of all such prohibited liquors and beverages as are found upon the premises, together with all signs, screens, bars, bottles, glasses, and other movable property used in keeping and maintaining said nuisance and the destruction of all such liquors and beverages, and such movable property as may have been seized under authority of the court pending the hearing of the cause. * * *.

Acts of Arkansas, 1917, Vol. I (Act of January 24, 1917), p. 49:

SEC. 12. * * * Any place or room kept or maintained in violation of the provisions of this section shall be deemed to be a common nuisance and may be abated by writ of injunction issued out of a court of jurisdiction upon a bill filed in the name of the State by the Attorney General, or any prosecuting attorney whose duty requires him to prosecute criminal cases on behalf of the State, in the county wherein the nuisance is maintained, or by any citizen or citizens of such county, such bill to be filed in the county in which the nuisance exists. And all rules of evidence and the practice and procedure that pertain to courts of equity generally in this State may be invoked and applied in any injunction procedure hereunder.

California, Statutes and Amendments to the Codes, 1915 (Act of April 28, 1915), p. 237:

> SEC. 3. The complaint in such action must be verified unless filed by the district attorney. Whenever the existence of such nuisance is shown in such action to the satisfaction of the court or judge thereof, either by verified complaint or affidavit, and the court or judge is satisfied that the owner of the property has received written notice of the existance of such nuisance, signed by the complainant or the said district attorney at least two weeks prior to the filing of the complaint, the court or judge shall allow a temporary writ of injunction to abate and prevent the continuance or recurrence of such nuisance. On granting such writ the court or judge must require, except when it is granted on application of the people of the state, written undertaking on the part of the applicant, with sufficient securities, to the effect that he will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decides that the applicant was not entitled thereto.
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> SEC. 5. If the existence of the nuisance be established in an action as provided herein, an order of abatement shall be entered as part of the judgment in the case, and plaintiff's costs in such action shall be a lien upon such building and place, enforceable and collectible by execution issued by order of the court.

Georgia Laws, 1915, Ex. Sess. (Act of November 17, 1915), p. 81:

> SEC. 4. * * * Any place or room kept or maintained in violation of the provisions

of this section shall be deemed to be a common nuisance and may be abated by writ of injunction issued out of the superior court upon a bill filed by the State Attorney General or the solicitor general of the circuit, or by any citizen or citizens of such county, such bill to be filed in the county in which the nuisance exists. And all rules of evidence and the practice and procedure that pertain to proceedings in equity generally in this State may be invoked and applied in any injunction procedure hereunder.

Indiana Acts, 1917, 70th Sess. (Act of February 9, 1917), pp. 25–26:

SEC. 21. The attorney general, prosecuting attorney, or any citizen of the county where such nuisance as defined in section twenty (20) exists, or is kept or maintained, may maintain an action in the name of the State of Indiana to abate and perpetually enjoin such nuisance. The plaintiff shall not be required to give bond in such action, and upon judgment of the court ordering that such nuisance shall be abated such court shall also order that said room, house, building, structure, boat, or place of any kind shall be closed for one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety to be approved by the court making the order in the penal sum of one thousand (1,000) dollars, payable to the State of Indiana, and conditioned that intoxicating liquor will not thereafter be manufactured, sold, bartered, or given away or furnished or otherwise disposed of thereon or therein or kept thereon or therein with intent to sell, barter, or give away or otherwise dispose of the same, contrary to the law, and that he will pay all fines, costs, and damages that may be assessed against him for any vio-

lation of this act; and in case of the violation of any condition of such bond the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated. * * *

Iowa Code, 1897, pp. 835, 839, 840:

SEC. 2405. Whenever a nuisance is kept, maintained, or exists, as defined in this chapter, any citizen of the county may maintain an action in equity to perpetually enjoin and abate the same. In such action the court, or a judge in vacation, shall, upon the presentation of a petition therefor, allow a temporary writ of injunction without bond, if it shall be made to appear to the satisfaction of the court or judge, by evidence in the form of affidavits, depositions, oral testimony, or otherwise, as the plaintiff may elect, unless the court or judge, by previous order, shall have directed the form and manner in which it shall be presented, that the nuisance complained of exists. Three days' notice in writing shall be given the defendant of the hearing of the application, and, if then continued at his instance, the writ as prayed shall be granted as a matter of course. * * *

SEC. 2408. If the existence of the nuisance be established in a civil or criminal action, an order of abatement shall be entered as a part of the judgment in the case; which order shall direct the destruction of the liquor, the removal from the building or place of all fixtures, furniture, vessels, or movable property used in any way in conducting the unlawful business and sale thereof, in the manner provided for the sale of chattels under execution, and the effectual closing of the building, erection, or place against its use for

any purpose prohibited in this chapter, and so keeping it for a period of one year, unless sooner released. * * *

SEC. 2410. If the owner appears and pays all costs of the proceeding, and files a bond with sureties to be approved by the clerk in the full value of the property, to be ascertained by the court, or, in vacation, by the clerk, auditor, and treasurer of the county, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, or, in vacation, the judge, may, if satisfied of his good faith, order the premises closed under the order of abatement to be delivered to said owner, and said order of abatement canceled so far as the same may relate to said property; and if the proceeding be an action in equity, and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty, or liability to which it may be subject by law.

Laws of Mississippi, 1916 (Act of February 16, 1916), p. 128:

SEC. 22. * * * Any place or room kept or maintained in violation of the provisions of this section shall be deemed to be a common nuisance and may be abated by writ of injunction issued out of a court of equity upon a bill filed in the name of the state by the state attorney general, or any district or county attorney whose duty requires him to prosecute criminal cases on behalf of the state, in the county wherein the nuisance is maintained, or by any citizen or citizens of

such county, such bill to be filed in the county in which the nuisance exists. And all rules of evidence and the practice and procedure that pertain to courts of equity generally in this state may be invoked and applied to any injunction procedure hereunder. * * *.

Laws of Montana, 1917 (Act of March 5, 1917), pp. 240–241:

SEC. 6. It shall be unlawful for any person owning, leasing, renting, or occupying any premises, building, structure, room, vehicle, or boat to knowingly permit intoxicating liquors to be manufactured, sold, exchanged, given away, bartered, furnished, or otherwise disposed of contrary to law, or to be kept with intent to sell, exchange, give away, barter, furnish, or otherwise dispose of the same in violation of law therein or thereon; and all premises, buildings, structures, rooms, vehicles, and boats wherein or whereon intoxicating liquor is manufactured, sold, exchanged, given away, bartered, furnished, or otherwise disposed of, or kept with intent to sell, exchange, give away, barter, furnish, or otherwise dispose of contrary to law, are common nuisances and may be abated as such, and upon conviction of the owner, lessee, tenant, or occupant of any premises, building, structure, room, vehicle, or boat of a violation of the provisions of this section the court shall order such nuisance to be abated, and shall order that such premises, building, structure, room, vehicle, or boat be closed until the owner, tenant, or lessee or occupant thereof shall give bond, with a sufficient surety, to be approved by the court making the order, in the penal sum of One Thousand ($1,000) Dollars, payable to the State of Montana, and conditioned that intoxicating liquor will not thereafter be

manufactured, sold, given away, bartered, furnished, or otherwise disposed of, or kept therein or thereon with intent to sell, exchange, give away, barter, furnish, or otherwise dispose of the same contrary to law, and that he will pay all fines, costs, and damages that may be assessed against him for any violation of any of the provisions of the laws of this state relating to intoxicating liquors.

Laws of Nebraska, 1917 (Act of April 21, 1917), pp. 438, 439:

SEC. 32. If the existence of a nuisance be established in an action as provided in this act, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, bar fixtures, and movable property used in conducting the nuisance and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and shall direct that all intoxicating liquors and the receptacles in which said liquors are kept with unlawful intent shall be seized and held subject to the order of the court, and effectual closing of the building or place against its use for any purpose, and so keeping it closed a period of one year unless sooner released. * * *.

SEC. 34. If the owner appears and pays all costs of the proceedings and files a bond with sureties to be approved by the Clerk of the District Court in an amount to be ascertained by the court, or, in vacation, by the Judge or Clerk of the Court, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year

thereafter, the court, or in vacation, the judge, may if satisfied of his good faith, order the premises closed under order of abatement to be delivered to said owner, and said order of abatement cancelled so far as the same may relate to said property; and if the proceeding be an action in equity and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to such building only. * * *.

North Dakota, Revised Codes, 1905, pp. 1532–1533:

SEC. 9373. * * * and if the existence of such nuisance is established, either in a criminal or equitable action, upon the judgment of a court or judge having jurisdiction, finding such place to be a nuisance, the sheriff, his deputy, or undersheriff or any constable of the proper county or marshal of any city where the same is located, shall be directed to shut up and abate such place, by taking possession thereof, * * * and said officer abating such nuisance shall securely close said building, erection, or place where such nuisance was located, as against the use or occupation of the same for saloon purposes, and keep the same securely closed for the period of one year, unless sooner released as hereinafter provided, * * * provided, however, that when leasehold premises are adjudged to be a nuisance, the owner thereof shall have the right to terminate the lease by giving three days' notice thereof, in writing, to the tenant, and when this is done the premises shall be turned over to the owner upon the order of the court or judge. But the release of the property shall be upon condition that the nuisance shall not be continued and

the return of the property shall not release any lien upon said property occasioned by any prosecution of the tenant. If the owner appears and pays all costs of the proceedings and files a bond with sureties to be approved by the clerk in the full value of the property to be ascertained by the court or judge, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within the period of one year thereafter, the court, or in vacation the judge may, if satisfied of his good faith, order the premises taken and closed under the order of abatement to be delivered to said owner, and said order of abatement canceled so far as the same may relate to said property, and if the proceeding is an action in equity and bond is given and costs therein paid before judgment and order of abatement, the action shall be thereby abated; * * *.

Section 9373 was amended by Laws of North Dakota, 1915, pp. 292–293, to read:

* * * *Provided, however,* That when leasehold premises are *closed under a temporary injunctional order or have been* adjudged to be a nuisance, the owner thereof shall have the right to terminate the lease by giving three days' notice thereof, in writing, to the tenant, and when this is done, *if the said owner shall prove to the court that he was without fault, and neither knowingly, nor without knowledge negligently permitted the keeping or maintaining of the nuisance complained of,* the premises shall be turned over to the owner upon the order of the court or judge *as hereinafter set forth.* But the release of the property shall be upon the condition that the nuisance shall not be continued, and the return of the property shall

not release any lien upon said property occasioned by any prosecution of the tenant. If the owner appears and pays all costs of the proceedings and files a bond with sureties to be approved by the clerk in the full value of the property to be ascertained by the court or judge, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within the period of one year thereafter the court, or in vacation time the judge may, if satisfied of his good faith, order the premises taken and closed under the order of abatement, to be delivered to said owner; *and if the proceeding is an action either at law or in equity and bond is given and costs therein paid, the action shall be dismissed at the end of one year from the date of the service of the temporary injunctional order, if in an equity case, or the closing of the premises if in a criminal case; in the meantime and in either form of action the premises where such nuisance was kept and maintained, shall be regarded as being under a restraining order of the court, a violation of which will subject the violator to punishment for contempt as hereinafter provided;* * * *. (Italics indicate language added by this amendment.)

General Laws of Oregon, 1915 (Act of February 23, 1915), pp. 159, 160:

SEC. 16. The prosecuting officer of the county or any other prosecuting officer where the nuisance as herein defined exists, or is kept, or is maintained, shall maintain a suit in the circuit court of said country in the name of the State to abate and perpetually enjoin the same. The injunction shall be granted at the commencement of the suit and no bond shall be required, * * *.

SEC. 17. Upon its being shown to any court or judge thereof that any injunction granted by such court or judge under the provisions of this Act, is being violated, such court or judge may make an order commanding forthwith the enforcement of such injunction by such measures or means as in the judgment of the court or judge may be necessary to prevent further violation of such injunction.

SEC. 19. Any one who knowingly permits any building or tenement owned or leased by him or under his control, or any part thereof, to be used in maintaining a common nuisance as defined in this Act, or who, after being notified in writing by the prosecuting officer or officers or any citizen of such use, omits to take all proper measures, either to abate said nuisance, or failing therein to eject therefrom the person or persons so using the same, shall be deemed guilty of assisting in the maintaining of such nuisance.

Code of Laws of South Carolina, 1912, Vol. II, p. 432:

SEC. 819. * * * Under the arrest warrant the defendant shall be arrested and brought before such Magistrate, and the case shall be disposed of as in case of other crimes, except that when he commits or binds over the parties for trial to the next term of Court of General Sessions for the County he shall make out every paper in the case in duplicate and file one with the Clerk of the Court for the County and immediately transmit the other to the Solicitor of the Circuit, whereupon the said Solicitor shall at once apply to any Circuit Judge at chambers within that Circuit, or to the nearest Circuit Judge if there be none in that Circuit, for an order or injunction restraining the de-

fendants, their servants or agents, from keeping, receiving, bartering, selling, or giving away any alcoholic liquors until the further order of the Court, or perpetually after hearing after notice to the defendant. Such Circuit Judge is hereby authorized, empowered, and required to grant the said restraining order or injunction, without requiring a bond or undertaking upon the hearing or receipt by him of said papers from the Court of the said Magistrate by the hands of the Solicitor; and any violation of said restraining order or injunction shall be deemed a contempt of Court and punished as such by said Judge or Court, or any other Circuit Judge, as for the violation of an order of injunction. * * *

Session Laws of South Dakota. 1916–1917 (Act of February 21, 1917), pp. 527, 528–529:

SEC. 67. * * * Upon the trial of said action, if the court shall find in favor of the plaintiff that such nuisance existed or was kept or maintained at the time of the commencement of said action, a judgment shall be rendered declaring the existence of such nuisance and perpetually enjoining the defendants from ever using said premises or any part thereof for any such illegal traffic in intoxicating liquors and from ever maintaining or aiding in maintaining or committing such a nuisance at any place in the State, and ordering said premises, or that portion of said premises wherein such nuisance was maintained, to be closed and forbidding its use for any purpose for a year from the date of the rendition of such judgment, and that the intoxicating liquors found therein, and any furniture and fix-

tures used in conducting or maintaining such nuisance, to (be) publicly destroyed, * * *.

SEC. 69. If it appears at the trial in any action for an injunction that the owner of any real property or premises adjudged to be a nuisance and ordered abated and closed as such under the provision of this act did not know of, or had no reasonable ground for knowing, or could not have known by the exercise of reasonable diligence that such nuisance was being maintained on his said premises, and if he shall pay all costs of the proceedings, he may file a bond payable to the county wherein such property is situated, with sureties to be approved by the clerk, in such sum as the court may designate, the same to be not less than one-half the full value of the said property or portion of the property ordered closed, to be ascertained by the court or judge, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein during the period of his ownership, and the court or judge thereof may thereupon, if satisfied of his good faith, order the premises taken and closed under the said judgment, released from the order directing the same to be closed for a year from the date of said judgment and the possession thereof turned over to said owner. * * *.

Public Acts of Tennessee, 1913 (Act of October 17, 1913), pp. 667–668:

SEC. 6. *Be it further enacted,* That if upon the trial the existence of the nuisance be established an order of abatement shall be entered as part of the judgment or decree of the court, which order shall direct the removal from the building or place where such nuisance exists or is maintained, of all

means, appliances, fixtures, appurtenances, materials, supplies, and instrumentalities used for the purpose of conducting, maintaining, or carrying on the unlawful business, occupation, game, practice, or device constituting such nuisance; and shall direct the sale thereof, or such portion thereof as may be lawfully sold, upon such terms as the court may order, and the payment of the proceeds into court to be applied to costs or paid over to the owner, and the destruction of such portion thereof, if any, as can not be lawfully sold within this State; * * *.

Laws of Utah, 1917 (Act of February 8, 1917), pp. 8–9:

SEC. 11. Whenever a nuisance is kept, maintained, or exists, as defined in this Act, the same may be enjoined and abated by a suit in equity, as provided by Chapter 99, Laws of Utah, 1913, for the abatement of common nuisances; * * *.

Laws of Utah, 1913 (Act of March 24, 1913), p. 189:

SEC. 2. * * * Provided that when the owner or agent is not in the actual possession of the premises he shall have, before an action is brought against him or effecting his real estate, under this Act, notice in writing of the existance (existence) and nature of the nuisance, and he shall have a reasonable time after the service of said notice in which to abate said nuisance. * * *

Acts of Assembly, Virginia, 1918 (Act of March 19, 1918), p. 602:

SEC. 36. Injunctions against nuisances as defined in this act.—The commissioner, his deputies or inspectors, the attorney for the Commonwealth, or any citizen of the county,

town, or city where such a nuisance as is defined in this act exists or is kept or maintained, may, in addition to the remedies given in and punishment imposed by this act, maintain a suit in equity in the name of the State to abate and perpetually to enjoin the same. * * * Upon the hearing of the cause, when it shall have been matured and set for hearing as required by law, upon deposition of witnesses, documentary and oral evidence, if the court or judge in vacation shall be satisfied that the material allegations of the bill are true, although the premises complained of may not then be unlawfully used, it or he shall continue the injunction against such house, building, or place, if it shall be a drug store, for one year, and in all other cases the injunction shall be perpetual. * * *. (The Act makes no provision for closing the premises.)

Acts of West Virginia, 1913 (Act of February 17, 1913), p. 105:

SEC. 17. The commissioner, his agents and deputies, and the attorney general, prosecuting attorney, or any citizen of the county where such a nuisance as is defined in section fourteen of this act exists, or is kept or maintained, may maintain a suit in equity in the name of the state to abate and perpetually enjoin the same, and courts of equity shall have jurisdiction thereof. The injunction shall be granted at the commencement of the action and no bond shall be required.

It shall not be necessary for the court to find that the premises involved were being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the bill are true, the court shall order that no liquors shall be sold, bartered,

given away, distributed, dispensed, or stored in such house, building, boathouse, clubroom, or other place, nor in any part thereof, for a period of not to exceed one year in the discretion of the court from and after such finding, in case of a drug store; in other cases the order for abatement shall be perpetual. * * *.

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